IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 3RD APRIL 2007 / 13TH CHAITHRA 1930

Crl.MC.No. 965 of 2007()

CRIME NO. 14/2007 OF KOIPURAM POLICE STATION
CMP.260/2007 of JUDL.MAGISTRATE OF FIRST CLASS COURT-II,PATHANAMTHITTA

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PETITIONER:

OMANAKUTTAN, AGED 34 YEARS,
RESIDING AT VAYARAKUNNIL VEEDU, CHIRAYITHU P.O.,
MARAMON, THOTTAPUZHASSERY VILLAGE,
THIRUVALLA TALUK, PATHANAMTHITTA DISTRICT.

BY ADV. SRI.P.GOPAKUMARAN NAIR
SRI.C.S.DIAS
SRI.AJITH MURALI

RESPONDENTS:

STATE OF KERALA, REPRESENTED BY
THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.SU NAZER

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 03/04/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

CRL.M.C.NO. 965 OF 2007

Dated this the 3rd day of April, 2007

ORDER

The petitioner is aggrieved by the condition imposed when the learned Magistrate directed release of his vehicle which was allegedly involved in illicit transportation of sand. The petition under Sec.451 of the Cr.P.C. was allowed, inter alia, on the condition that the petitioner must produce bank guarantee to the tune of Rs.3.25 lakhs.

2. The order shows that the learned Magistrate took note of the fact that the vehicle was thrice earlier involved in similar offences and was released to the petitioner on all such occasions. In these circumstances, the learned Magistrate had imposed the condition that the petitioner must furnish bank guarantee for Rs.3.25 lakhs.

3. The learned counsel for the petitioner submits that the petitioner is not able to comply with the said condition. As

a result of that, though the impugned order was passed on 1/2/07, the petitioner has not been able to get release of his vehicle and consequently the vehicle is being exposed to sun and rain in the custody of the police. To prevent further damage and loss, the condition may be modified and the petitioner may be allowed to take advantage of the order of release.

4. I have heard the learned counsel for the petitioner and the learned Public Prosecutor. I find there is merit in the opposition of the State and there is justification in the court before imposing strict conditions for the release of the vehicle to the petitioner. However, I take note of the fact that the petitioner has not been able to comply with the condition for the last two months and consequently the vehicle is continuing in the custody of the police. I must alertly take note of the decision in **Sunderbhai Ambalal Desai v. State of Gujarat** (AIR 2003 SC 638) which expresses the anxiety of the system to ensure that unnecessary damage and destruction to the property is avoided.

5. Taking all the circumstances into account, I am satisfied that the said condition - that the petitioner must produce the bank guarantee for Rs.3.25 lakhs, can be modified. Appropriate safeguards can, of course, be imposed.

6. In the result, this Crl.M.C. is allowed in part. The said condition shall stand modified. The vehicle shall be released to the petitioner if the petitioner, instead of Condition No.1, complies with the following conditions:

(i) He shall execute a bond for Rs.3 lakhs (Rupees three lakhs only) with two solvent sureties each for the like sum to the satisfaction of the learned Magistrate.

(ii) He shall deposit an amount of Rs.25,000/- as security before the learned Magistrate.

7. Hand over a copy of this order to the learned counsel for the petitioner.

Sd/-

(R. BASANT, JUDGE)

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P.S. to Judge